

STATEMENT OF EMERGENCY

907 KAR 8:005E

(1) This emergency administrative regulation is being promulgated in conjunction with six (6) other administrative regulations – 907 KAR 8:010E, Independent occupational therapy service coverage provisions and requirements; 907 KAR 8:015E, Independent occupational therapy service reimbursement provisions and requirements; 907 KAR 8:020E; Independent physical therapy service coverage provisions and requirements; 907 KAR 8:025E, Independent physical therapy service reimbursement provisions and requirements; 907 KAR 8:030E, Independent speech pathology service coverage provisions and requirements; and 907 KAR 8:035E, Independent speech pathology service reimbursement provisions and requirements – to expand the base of therapy service providers to ensure that Medicaid recipients have access to these services in accordance with federal requirements.

(2) This action must be taken on an emergency basis to comply with a federal mandate.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

Steven L. Beshear
Governor

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (New Emergency Administrative Regulation)

5 907 KAR 8:005E. Definitions for 907 KAR Chapter 8

6 RELATES TO: 194A.025(3)

7 STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1),
8 205.520(3), 42 U.S.C. 1396a

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
10 Services, Department for Medicaid Services, has responsibility to administer the Medi-
11 caid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to
12 comply with a requirement that may be imposed or opportunity presented by federal law
13 to qualify for federal Medicaid funds. This administrative regulation establishes the defi-
14 nitions for administrative regulations in Chapter 8 of Title 907.

15 Section 1. Definitions. (1) "Adult" means an individual who is at least twenty-one (21)
16 years of age.

17 (2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

18 (3) "Child" means an individual who is under twenty-one (21) years of age.

19 (4) "Department" means the Department for Medicaid Services or its designee.

20 (5) "Electronic signature" is defined by KRS 369.102(8).

21 (6) "Enrollee" means a recipient who is enrolled with a managed care organization.

(7) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Occupational therapist" is defined by KRS 319A.010(3).

(10) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(11) "Physician" is defined by KRS 311.550(12).

(12) "Physician assistant" is defined by KRS 311.840(3).

(13) "Physical therapist" is defined by KRS 327.010(2).

(14) "Physical therapy assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(15) "Prior authorized" means authorized by:

(a) The department if the service is for a recipient who is not an enrollee; or

(b) A managed care organization if the service is for an enrollee.

(16) "Provider" is defined by KRS 205.8451(7).

(17) "Recipient" is defined by KRS 205.8451(9).

(18) "Speech-language pathologist" is defined by KRS 334A.020(3).

907 KAR 8:005E

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 8:005E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in Chapter 8 of Title 907 of the Kentucky Administrative Regulations. Chapter 8 contains Medicaid administrative regulations regarding independent occupational therapy, independent physical therapy, and independent speech therapy. The Department for Medicaid Services currently covers these therapies in various settings (for example, home health agencies, physician's offices, outpatient hospitals, nursing facilities) but does not allow these practitioners to enroll as independent providers in the Medicaid Program. Instead, the practitioners have to work for or under contract with a provider type (such as the aforementioned) that is authorized to provide therapy. DMS is promulgating, in conjunction with this administrative regulation, six (6) other administrative regulations which will authorize occupational therapists, physical therapists, and speech language pathologists to enroll in the Medicaid Program, provide services to Medicaid recipients, and be reimbursed directly by the Medicaid Program for the services. The six (6) other administrative regulations are 907 KAR 8:010, Occupational therapy coverage provisions and requirements; 907 KAR 8:015, Reimbursement for occupational therapy; 907 KAR 8:020, Physical therapy coverage provisions and requirements; 907 KAR 8:025, Reimbursement for physical therapy; 907 KAR 8:030, Speech therapy coverage provisions and requirements; and 907 KAR 8:035, Reimbursement for speech therapy.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in Chapter 8 of Title 907 of the Kentucky Administrative Regulations. Chapter 8 contains Medicaid administrative regulations regarding independent occupational therapy, independent physical therapy, and independent speech therapy.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in Chapter 8 of Title 907 of the Kentucky Administrative Regulations. Chapter 8 contains Medicaid administrative regulations regarding independent occupational therapy, independent physical therapy, and independent speech therapy.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in Chapter 8 of Title 907 of the Kentucky Administrative Regulations. Chapter 8 contains Medicaid administrative regula-

tions regarding independent occupational therapy, independent physical therapy, and independent speech therapy.

- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation rather than an amendment to an existing administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment to an existing administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment to an existing administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment to an existing administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any occupational therapist, physical therapist, or speech-language pathologist licensed in Kentucky may be affected if the individual wishes to enroll in the Medicaid Program and be reimbursed for services provided to Medicaid recipients. The Department for Medicaid Services (DMS) is unable to predict how many such individuals will choose to enroll in the Medicaid Program.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. An occupational therapist, a physical therapist, or a speech-language pathologist who wishes to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the agency wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). An occupational therapist, a physical therapist, or a speech-language pathologist therapist who wishes to provide services to Medicaid recipients could experience administrative costs associated with enrolling with the Medicaid Program.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An occupational therapist, a physical therapist, or a speech-language pathologist who enrolls with the Medicaid Program will benefit by being reimbursed for services provided to Medicaid recipients.

- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: No cost is necessary to initially implement this administrative regulation as it is simply a definitions administrative regulation.
 - (b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation as it is simply a definitions administrative regulation.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly nor indirectly increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Chapter 8 of Title 907 of the Kentucky Administrative Regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 8:005E
Agency Contact Person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation.
2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation. There is; however, a mandate to ensure recipient access to services covered by the state's Medicaid program. As the Department for Medicaid Services (DMS) covers occupational therapy services, it must ensure that an adequate provider base exists to ensure recipient access to care. A relevant federal law – 42 U.S.C. 1396a(a)(30) requires a state's Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

Creating a new base of authorized providers comports with the intent of the aforementioned federal law.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 8:005E
Agency Contact Person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
 - (c) How much will it cost to administer this program for the first year? No cost is necessary to implement this administrative regulation in the first year.
 - (d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: